

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

CIVIL REVISION APPLICATION No 766 of 1994

with

CIVIL REVISION APPLICATION No 767 of 1994

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the Judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KIRITBHAI RAMNIKLAL PAREKH

VERSUS

RAJESH RAMNIKLAL PAREKH

Appearance: (In both the matters)

MR SM SHAH for the Petitioner

MR BP MUNSHI for the Respondent

CORAM : MR JUSTICE S.K. KESHOTE

Date of Decision : 30/03/2000

C.A.V. JUDGMENT

1. As both these revision applications are between the same parties through arising from two different suits, the same are taken up for hearing together and are being disposed of by this common order.

2. Both the parties filed separate suit claiming their ownership in the disputed land on the basis of the will. The parties are closely related i.e. real brothers. Learned trial court found as a fact that the petitioner herein is in possession of the suit property but his possession was taken to be illegal and the application for temporary injunction has been rejected. Appeal filed against that has also been rejected by the appellate court.

3. In the case of the respondent, the trial court granted only interim prohibitory injunction and refused mandatory injunction. That order has also been challenged in the appeal by both the parties. The appeals were dismissed. This court has admitted these revision applications and ordered to maintain the status-quo, which order continues till this date on which the parties are not at variance. The suits out of which these revision applications have arisen are of the year 1992. For all these years, this status-quo order is continuing and if it is ordered to be continued for few months more then it will not adversely affect the parties to the suit. In such matters, where the suits are old, the court should take all care to see that its valuable time may not be consumed in deciding interim applications and the suit itself may be ordered to be disposed of finally. If on this question, the court has decided that the interim injunction has to be granted in the suit, it will not only consume its valuable time but this order passed will always be subject to the final decision in the suit. It will only be an interlocutory order.

4. Learned counsel for the respondent contended that the petitioner has no right, title or interest in the suit property. He has illegally taken the possession of the suit property and both the courts have concurrently held so. So the possession may be given to the respondent. In the alternate, he contended that the property may be kept under seal of the court. It is not in dispute that both the parties are residing in U.S.A..

5. In the matter of grant of injunction, the court has to consider that it is an interlocutory stage where finally the claims of the parties are not being decided.

It is true if necessity arises, the possession of one party in the property may be protected but at the same time the court should take care that ultimately if that party fails then how the other party which has been deprived of the possession and fruits of the suit property for all these years has to be compensated. If the courts are not taking care while granting temporary injunction or refusing the temporary injunction to see how ultimately the either party has to be compensated then in the eventuality of the failure of the party in whose favour the order has been passed, the other side will go with agony, pains and sufferings. Because of the court's order, the other side will not be able to get the property and in such case, he can legitimately be compensated for this loss. In this case, both the courts have concurrently held that the possession of the property has been illegally taken by the petitioner. He has no right, title and interest in the suit property but these are only tentative and provisional findings for the purpose of deciding Ex.5 and it is also possible that he may finally fail in the suit.

6. The court is not deciding these matters on merits for the reason that the suits are very old and the same have to be given priority in hearing and for this intermittent period whatever the position re: possession of the property is concerned, it may not be disturbed. But to protect the right of the other side condition to pay damages for use and occupatin of the property in dispute is to be imposed. It is a house and it has a potentiality to fetch a reasonable amount of rent. Learned counsel for the respondent gives out that this porperty may fetch rent of about Rs.3000/to Rs.5000/-p.m..

7. Shri Shah learned counsel for the petitioner contended that he has no objection in case this court fix some reasonable sum to be deposited every month by the petitioner in the trial court for retention of the possession of the suit property. What he submits that this amount has to be ordered to be deposited from prospective date and not from the date on which the suit has been filed or ex-parte injunction has been granted by the trial court.

8. Shri Munshi learned counsel for the respondent, on the other hand, contended that the ex-parte injunction has been granted by the trial court and it continued during the pendency of the suit. Then on vacation of the injunction, the ex-parte injunction was granted by the appellate court which also continued till

the decision of the appeal. Then this court has protected for all these years and the petitioner is continuing in possession under the court's order and this amount of damages be ordered to be deposited by the petitioner from the date on which the ex-parte injunction has been granted initially by the trial court.

9. I find sufficient merits in this contention of Shri Munshi that this amount has to be deposited from the date on which the court has protected the possession of the petitioner. What amount has to be fixed has been left to the discretion of the court by the counsel for the petitioner. The counsel for the respondent, as stated earlier, has given out that this house can fetch a rent of Rs. 3000/- to Rs.5000/-p.m. and if we go by this then I consider that Rs.4000/- is reasonable sum to be fixed as amount to be deposited by the petitioner per month from the date on which ex-parte temporary injunction has been granted in his favour by the trial court. He shall continue to deposit this amount in the court till the decision of the suit. This amount shall lie deposit with the trial court and in the eventuality of the success of the petitioner in the suit, this amount has to be paid to him and where he fails then this amount has to be paid to the respondent.

10. In the result, these two revision applications are disposed of in terms that the interim relief granted by this court shall continue till the decision of the suits subject to the modification that the petitioner shall deposit Rs.4000/-p.m. as damages for use and occupation of the property from the date on which the trial court has granted ex-parte interim relief and to continue to deposit the same regularly during the pendency of the suit. The future amount has to be deposited on or before seventh day of every English calendar month. So far as the arrears are concerned, the amount has to be deposited within a period of two months from today. In case the petitioner fails in the suit then this amount has to be paid to the respondent. Where the petitioner succeeds in the suit then this amount has to be paid to him. Learned trial court is directed to dispose of the suits finally within a period of six months from the date of receipt of writ of this order or certified copy thereof whichever is earlier. The revision applications and Rule therein stand disposed of accordingly with no order as to costs.

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